A BRIEFE DISCOURSE,

DECLARING

And approving the neceſſary and inviolable maintenance of

THE

LAUDABLE CUSTOMES

OF

LONDON.

Namely, of that one, whereby a reaſonable partition of the goods of husbands among their Wives and Children is provided:

With an anſwer to ſuch objections, and pretenced reaſons, as are by perſons unadviſed or evill perſwaded, uſed againſt the ſame.

LONDON,

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Juris civilis de consuetudine Axiomata sive Maximæ.

Consuetudo vim habet rei Judicatæ.

Consuetudo est optima legum interpres.

Conventio & consuetudo vincunt legem.

Consuetudo firmata est ubi simili aliquando contradicto, Judicio quid est obtentum seu Judicatum.

Cœpta usucapio vel præscriptio per defunctum, continuatur per hæredem, cum in omne jus defuncti succedat hæres.

Profunda requie humano generi prospexit usucapio.
Barto.

Usucapio est quies periculi solicitudinisque litium.
Cicero.

A Briefe Diſcourſe, declaring and approving the neceſſary and inviolable maintenance of the laudable Cuſtomes of *London*.

WE finde it neceſſary in all common-wealths, for ſubjects to live under the direction of Lawes, conſtitutions or cuſtomes publickly known and received, and not to depend onely upon the commandement and pleaſure of the governour, bee the ſame never ſo juſt or ſincere in life and converſation. For that the Law once enacted and eſtabliſhed, extendeth his execution towards all men alike without favour or affection: whereas if the word of a Prince were a Law, the ſame being a mortall man, muſt needs be poſſeſſed with thoſe paſſions, and inclinations of favour or diſfavour that other men be: and ſometimes decline from the conſtant and unremoveable levell of indifferency, to reſpect the man beſides the matter, if not to regard the perſon more then the cauſe. Wherefore it was well agreed by the wiſeſt Philoſophers and greateſt Politicks, that a dumb Lawes direction is to be preferred before the ſole diſpoſition of any living Prince, both for the cauſe afore touched, and for other reaſons which I will here omit. But to deſcend to the particularities of my intention, and to treat of the validitie and inviolable obſervation of ſome laudable (I might term them ſacred) cuſtomes, being the principall joynts, and very ſinews of all good Corporations and Fellowſhips, and being alſo the maintainers of a ſa-

cred unity and naturall amity between the husband and his wife, the parents and their children, which (as *Aristotle* the wise Philosopher termeth it) is the beginning of a City. For what is a City but a manifold and joynt society consisting of many households, and living under the same Lawes, Freedomes and Franchises? so I must needs confess them to be the procurers and causes of sundry good effects to the generall estate of the City wherein they be observed: as of the other side they may breed sundry inconveniences in such a City where the same are violated and broken with allowance and impunity. I will therefore shortly shew the nature of a custome, and the difference which it holdeth from a publick Law. And next I will declare how necessary the same are to manage the government, and to entertain the prosperity and traffique of this City: and namely that one good custome which I intend to speak of. Lastly, I will endevour to answer those pretensed reasons, and colourable objections made against the precise maintenance and defence thereof.

First then I suppose that a custome which justly deserveth that name, is of no less reverent regard and authority then a written Law, passed and allowed in Parliament: which notwithstanding I do grant that there are certain differences between a Law and a custome: for the custome taketh his force by degrees of time, and consent of a certain people, or the better part thereof, but a Law springeth up in an instant, and receiveth life from him that is of soveraign authority to command. A custome enlargeth it selfe by plausible entertainment, and acceptable circumstances of time and occasion, with generall liking and allowance, whereas a Law is commanded

manded and publiſhed by power and received by dutifull conſtraint, and that often againſt the good will of them that are bound by it, for which cauſe *Chryſoſtome* not improperly compared the Cuſtome to a King, and the Law to a Tyrant. Moreover the cuſtome doth neither promiſe a reward for obſervation, nor inflict a puniſhment for violation thereof: whereas the Law alwayes importeth either a conſideration of gain, or a terrour of puniſhment or damage, if the ſame be not a Law of enlargement or permiſſion that diſanulleth the prohibitions of a former Law. Finally a cuſtome is applyed to the commodity of ſome one province, circuit or City, and grounded upon a ſpeciall reaſon of conveniencie or commodity, for thoſe perſons or place where it is obſerved: whereas the Law hath a generall reaſon, extended to the whole Nation bound by the ſame, without private conſideration of the due importances of any peculiar place or people. Therefore it is well ſaid, and put in ure by the common Lawyer, *Quod conſuetudo ex rationabili cauſa profecta privat communem legem*, That a cuſtome grounded upon reaſonable and honeſt conſideration abridgeth or altereth the judgement of the common Law. So that in cuſtomes the eſtate or condition of the people are to be reſpected, and ſuch cuſtomes as are conſonant to reaſon, and moſt appliable to the eſtate and quality of ſuch people, are to be allowed. For example; the cuſtome of *Boroughengliſh*, yet in force in ſundry places of *England*, whereby the younger ſonne is to inherite his fathers land, hath taken ſtrength by this reaſon, that the father may (if he be not careleſs and ſecure to do his children good) train up his elder Sons in ſome good Trade or Occupation by which they

See 34 *H.* 8. B. cuſtome, 59. A man may not preſcribe or plead a cuſtome *per totam Angliam*, for that is common Law and no cuſtom otherwiſe if the cuſtome had been pleaded to be in ſuch a City or Country, as *Gavelkind Glot.* Fee and ſuch like. *Boroughengliſh.*

they may be able to get their own living: whereas the youngest, by the impotency and tenderness of his yeers, may be perchance unapt and unable for such instruction. And so the Custome commendable that provideth for the relieſe of the young and impotent. Also by an old custome of this Land, in sundry Boroughs and Towns, Lands were devisable by Will, though the Lawes of *England* pronounced such devises to be void; and the reason was, for that inhabitants of Boroughs or Cities, whose traffique and Trade resteth much upon mutuall trust and credite, are oftentimes indebted at the time of their death. Wherefore it was thought meet, that they might devise their land for the due satisfaction of their creditours, which to do, they were enabled by the custome. In *Kent* and other places of this land, the custome of *Gavelkinde* is maintained, which importeth an equall division of the inheritance to be made among all the brethren: a custome partly grounded upon a naturall consideration, for that all the Sonnes hold the like obligation of nature and desert with their Parents, in the which they have an equall interest: and also suffered to take place in *Kent*, and other places of this Land, in those dayes most inclinable to rebellion, to the intent to enfeeble their forces, and to bring their great houses and families to impuissance and decay, thereby to disable and discourage them from such unlawfull and violent attempts.

But see now the Statute of 32 *H.*8. c. 2. and 34. *H.*8. c. 5. of Explanation.

And to come neerer to the matter, this famous and renowned City of *London* hath many laudable and ancient customes: which though they derogate and differ much from the rules of the common Law, yet have they been not onely approved by inviolate experience of sundry

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dry ages, but alſo have been of old ratified and confirmed by ſundry Acts of Parliament, & Charters of Princes, and namely by the Statute of *Magna Charta*, by theſe words following, *Quod civitas* London *habeat omnes libertates ſuas antiquas & conſuetudines quas habere conſuevit*, which is, *That the City of* London *have all their ancient liberties and cuſtomes which they have uſed to have.* The words following for other Cities, &c. be, *Quod habeant omnes libertates & liberas conſuetudines ſuas*, which ſignifieth, *that they ſhall ſtill retaine their liberties and free cuſtomes*, that is to ſay, their freedomes and immunities, as to bee diſcharged of toll, pontage, and ſuch like: Whereas the City of *London* hath proviſion made by that eſtatute, for all uſages and cuſtomes whatſoever. Verily as the City of *London* beareth oddes, and prerogative over other Cities in *Engl.* being the *Metropolis* or mother City thereof, ſo are the inhabitants of it no leſs neceſſary then profitable members of the Commonwealth, in tranſporting our commodities into other lands, and enriching us with the benefits and fruits of other countries. The City of *Rome*, and Citizens of the ſame had that prerogative as in other things, ſo alſo in their executions for cauſes capitall, that they ſhould not be crucified, being a death of great torment and infamy, but onely beheaded. The benefit of which cuſtome Saint *Paul* claimed and obtained in the time of *Nero*: pretending that hee was a Citizen of *Rome*. The ſaid Citizens alſo by the dignity and reputation of their City were not for any tranſgreſſion or offence to be fettered, whipped, or ſcourged, which priviledge likewiſe the ſaid Saint *Paul* took hold of, who being oppreſſed by the calumnious accuſations and outcries of the Jewes, was by commandement of

Magna Charta. ca. 9.

Acts.22. *Claudius Lysias* the Captain to be examined by torture of whips, what was the cause of that generall murmure and exclamation of the people against him: yet Saint *Paul* by alleaging that hee was a free man of *Rome*, not onely delivered himselfe from the injury and rage of the people, but also made the Captain much afraid of question or punishment for the indignity offered unto him, so great was the Majesty of that City, and so reverent the reputation of all such as were accounted members thereof. *Athenæus* termed *Rome* in those dayes very fitly, *Epitome totius orbis*, an abridgement of the whole world, for the continuall concourse and resort of all Nations thither. We may derive thence an argument for our purpose, that *London* being worthy that title, *Epitome totius Angliæ*, in respect of the necessary repair and frequent assembly of all estates therein, whether it be for Justice by the Lawes of this Land, which are here administred, or by trade of marchandise, which is here so great that it may bee termed *totius occidentis emporium*: and chiefly because of the favourable and often sojorn of our most royall and gracious Soveraign, whose Majesties chamber this is as it alwayes hath been of her most noble progenitors: the same is no less worthy of sundry preheminences which by Custome and Charter it enjoyeth above other Cities of this Land.

43 E.3.fo. 27. Vide Brook, Prescr. 8. We finde in our Law Books, that the Scholers of *Oxford* claimed a privilege by custome, to have preferment of any house or lodging, that was to be let in the City of *Oxford*, and the same was allowed in the Common place in *Westminster*, where Justice *Finchden* a man of great reckoning at that time said, that it is reason that they which are principall Instruments of great good in the

the Commonwealth, should have beneficiall customes for the maintenance of their societies: the like reason (saith he) serveth for the Merchants of the staple in *Westminster*, and also for the Justices of Assises, or Justices in Eyre, to have the like prerogative. Also it is not unfit to remember, that the Barons of the Land have divers prerogatives above other subjects, that is, they shall not be sworn when they pass upon their Peers, and if they bring an appeal, the defendant shall not wage battaile against them, and they are exempted out of all returnes in Juries, and shall not be sworn in Leets, and all in respect of their dignity, and for the necessary use of them in government of the Commonwealth. So that persons of needfull employment in the estate, have alwayes been favoured in all their honest customes or prescriptions, and especially the Citizens of *London*, and the rather for the great presumption and opinion conceived of their experience, who being trained by liberall education, in great use of service and affairs: and also by their travaile and traffique beyond the Seas, by continuall negotiation with other Nations must needs (by all reasonable likelihood) procure unto themselves great judgement and sufficiency, to manage a politick Regiment in their City, according unto that verse of the Poet *Homer* in the beginning of his Treatise of wise *Ulysses* his adventures remembring his travaile into sundry Nations and Cities.

Dic mihi Musa virum capta post tempora Troiæ,
Qui mores hominum multorum vidit & urbes.

The sense whereof may be well expressed in English verse without rime thus:

All travailers do gladly report great praise of Ulysses.

For that he knew many mens manners, and saw many Cities.

Which opinion of their policy and experience conceived and approved by the noble Princes of this Land in all ages doth evidently appear by the manner of their government, whereat strangers do no less envy then admire seeing so populous a City, containing by true estimation more then 500 thousands of all sorts of Inhabitants, managed not by cruell Viceroyes, as is *Naples* or *Millain*, neither by proud *Podestà*, as be most Cities in *Italy*, or insolent Lieutenants or Presidents, as are sundry Cities in *France*, (whose Presidents are noble men or Captaines, having their persons environed with a guard of Souldiers, and holding their Cities possessed with a Garrison, as well in the quietest calm of peace, as in the hottest combustion of war:) but by a man of Trade or a meer Merchant, who notwithstanding, during the time of his Magistracy, carrieth himselfe with that honourable magnificence in his port, and ensignes of estate, that the Consuls, Tribunes or Pretors of *Rome*, (namely, when as the same was reduced to a Monarchy) much less the *Podestà* of any City in *Italy*, never bare the like representation of dignity, and that not onely in peaceable seasons but in time of greatest warre: for such credit the Princes of this Land have still reposed in their fidelity and wise direction, that we have few examples in any Chronicle of any noble man or other appointed to assist the Lord Mayor in his government, much less to be sole Ruler or Lieutenant for the time, were the state never so troublesome, and the affaires of never so great consequence and importance.

And to adde a little more in proofe of the singular

good

good conceipt had of their ſervice to the Commonwealth, and that the ſame hath in all ages from the Conqueſt given them prerogative above other Cities of this Land, we read in the vii. yeer of *Henry* the vi. that in a *nativo habendo* brought by the Lord to recover his villain, it was adjudged a good return made by the Sheriffe of *London*, that ſuch was the Cuſtome of *London*, that a villain having remained there the ſpace of one whole yeer and a day, could not bee fetched or removed out thence. For ſo great is the prerogative of that place, that it giveth protection to the villain or bondman againſt his Lord, while the ſaid bondman ſhall be reſiant there. Likewiſe it was taken for a good cuſtome in the City of *London*, that no attaint ſhould be maintained for a ſuppoſed falſe verdict given in that City. In the which caſe the Sheriffe of *London* made return upon a writ of attaint ſued againſt a *Londoner*, that ſuch was and had been alwayes the cuſtome of the City, that no attaint ſhould be allowed againſt any Commoner or other Citizen of the ſame, for which cauſe he might not *ſalvis libertatibus* without impeachment of their liberties, ſerve or execute the writ. Then was there a writ directed out of the Chancery to the Juſtices of the Kings Bench with expreſs commandement to allow to the Mayor, Sheriffes and Citizens all their liberties, immunities and cuſtomes, and further out of that writ was a *Venire facias* directed to the Mayor and Sheriffes, whereby was day given them to come and make declaration of their cuſtome, at which day the parties plaintiffe and defendant being preſent, the Mayor and Sheriffes had full allowance of their cuſtomes, the Sheriffes were holden excuſed for their return, and the parties writ was abated, and

7 H. 6. 32.

7 H. 6. 32. and the ſame caſe was adjudged in 2 E. 3.

himselfe punished by imprisonment for his vexation. I have here at large remembred this case, to the end it may appear both what credit and opinion of conscience and truth, the Law ascribed to the Citizens of *London*, and also how carefull and vigilant the Mayor and Sheriffes have alwayes been to preserve and uphold their customes, although sithence that onely custome was for especiall causes abrogated by the Statute of 11. *H.* 7. and an attaint given in *London*. Moreover, we finde it recorded in *M.* 2. *E.* 3. that whereas a Citizen of *London* brought an appeal of Robbery, and the defendant would have tryed his innocency by battail, as he may in semblable case against another man, *wilby* then Justice answered him, that he was not to have allowance of battaile in an appeal commenced by a Citizen of *London*, for that by custome of their City they were exempted from it. The like appeal was sued *P.* 20. *E.* 3. wherein the defendant made offer of the same Triall. And although hee that sued the appeal, would have joyned battaile without regard of this franchise, the Lord Mayor with the rest of the Corporation sued a writ out of the Chancery, reciting their custome or franchise, and prayed allowance of it in disturbance of the battaile. 20. *E.* 3. *Coron.* 125.

11 *H.* 7. c. 11.

M. 2 *E.* 3. cor. pl. 157.

P. 20 *E.* 3. cor. pl. 125

If a free man or free woman of *London* be committed to *Ludgate*, they are to be excused from the ignominy of Irons, if they can finde sureties to be true prisoners, and if the sum be not above an hundred pounds. Upon the like reason is that custome established for the liberall and milde imprisonment of the Citizens in *Ludgate*, whereby they have indulgence and favour to go abroad into any place by *Easton* as we term it, under the gard and superintendency of their Keeper, with whom they must

return

return again to the Priſon at night: a cuſtome verily, though quarrelled with by ſome, and ſuppoſed to be the hinderance and delay of Juſtice, and oftentimes a mean to defraud men of their true debts and executions, yet the ground thereof being well examined, it wanteth not a ſound maintenance in the courſe of reaſon (as I think.) For the preſcription or cuſtome is but a mitigation of the extremity of their impriſonment, ſerving rather for the expedition of their diſcharge, and ſpeedy ſatisfaction of their creditours, then for any other purpoſe: ſo that this ſcope and licence in proper conſtruction and ſenſe of Law, cannot be termed an enlargement or liberty. For to remain in the materiall Priſon in the night, and to go forth out of the ſame in the day, under the reſtraint and controll of a continuall Keeper, is alwayes an impriſonment, though exerciſed with greater mildneſs and lenity. And divers cauſes there are to warrant the ſame in *London* rather then in other places: the one is for that the City of *London* ſtandeth chiefely upon the traffique and intercourſe of Merchants, and the uſe of buying and ſelling of their ſundry commodities, which is not alwayes performed by themſelves, but by their factours and ſervants, and oftentimes one factour or agent ſerveth the turn of many Merchants, whereby hee is preſſed to ſundry and ſeverall accounts. Wherefore to the end the priſoners may enform themſelves upon their mutuall reckonings, both what they owe, and what is due unto them, and alſo that upon conference and account with their agents returning from other countreys, they may be made acquainted with the increaſe of their adventures or commodities, it is neceſſary they ſhould have places of meeting, which will not be ſo convenient in a

cloſe

close prison, the same being no place of assembly or free accesse (especially it being no common duty in the Gaoler to permit any person to come among his prisoners for any such occasion) and if the Gaoler were bound to endure and suffer such common and voluntary repair unto his prisoners: yet will it be no fit place for Merchants to treat and negotiate their causes, which cannot be well determined without their Books of accounts, and witnesses of their contracts, and oft must the same bee decided before the Masters of their Trades or Companies. So that this custome made in furtherance of mutuall accounts, doth very much enable the prisoner to procure his liberty and pay his debt. Also if the prisoner be poor and of himselfe unable to pay, this toleration of their going abroad with the Keeper, is a good meane for him to procure the Alms, and reliefe of other charitable people, thereby the sooner to purchase his liberty. Whereby it appeareth what reckoning the Law maketh of them, in consideration of their great hazzard by Sea (through danger of shipwrack or piracy) and adventure in strange Countreys (by falshood and negligence of Factours) or by wars between Princes, the inconveniences and mischiefes whereof, are not so offensive or prejudiciall to any, as to Merchants, whose condition as it may by a fortunate voyage be much enriched and advanced: so may it by any of the mischances aforesaid, be so empaired and overthrown, that it may turn himselfe, his wife, and family to utter calamity and distresse. Therefore as the hope and comfort of the wife (having commonly no assurance of joynture in the City, nor expectation of dower as other women have) and also of the children (being for the most part born to no great

Vide 4 E. 6. com. 36.

patrimony,

patrimony, other then that which their fathers ſhall by their vertuous induſtry acquire) doth onely depend upon the fortune of their husbands or fathers travaile, it hath laudably and conſcionably been obſerved for a cuſtome, and is yet by the wiſer and better ſort religiouſly regarded that when any Citizen of *London* dyeth, his wife ſhall have the third part of his goods, and the children another third part, equally to be divided among them, according to the proportion of his goods, and himſelfe another third part to diſpoſe by his laſt Will and Teſtament at his pleaſure. A partition ſo reaſonable and grounded upon ſo good conſideration, (the quality and eſtate of the *Londoners* conſidered,) that if it were not approved by cuſtome, but to be propoſed in the wiſeſt and higheſt Court of Parliament, whether it were fit to have the force of a Law, I think no man (unleſſe he were a *Timon* by nature, or a *Diogenes* by diſpoſition) no man I ſay poſſeſſed with common humanity would gainſay or impugn it. Doth not the common Law now in force give the husband preſently by the intermariage, all the goods and chattells of his wife, though the ſame bee of the value of 10000 pounds, ſo that when ſhee is once his wife, the Law diſableth her to give or diſpoſe any thing that was hers before? And ſhall not the husband be bound by ſemblable Obligation of reaſon to leave his wife the third part of his goods, and if the Law be in that reſpect defective (as what Law in the world, except the Law of God, is without his imperfections?) ſhall not the cuſtome ſupply it in ſuch ſort, that no barbarous and uncharitable or cautelous, and unkinde practiſes by deed of gift, or otherwiſe, ſhall diſappoint or defraud the ſame? eſpecially here in *London*, where the good eſtate of men,

for the most part consisteth in movables, by reason of their continuall Trades and Exchanges, so that their wives cannot assure themselves of their dowry commonly called thirds, as they might if their husbands were seised of Lands in Fee-simple. Also the comfortable society between husband and wife, is of that pretious estimate and honourable reputation before God and man, that there may not possibly a more sacred and strait conjunction be imagined among the children of men. *Charondas* the Philosopher calleth them *Homosipios*, which signifieth, fed with the selfe same food. And *Epimenides* another Philosopher calleth them *Homocapnos*, which is as much to say, as using the selfe same smoke, and the selfe same manger, and as it were drawing the selfe same breath. Finally, the Scripture giveth expresse charge to each man to tender his wife with extraordinary good offices by saying, *Thou shalt leave thy Father and Mother, and cleave to thy wife.* If the force of custome did not enforce the matter, these onely considerations were sufficient to prove, that there should be nothing private, nothing peculiar, nothing proper, but every thing in common, every thing equally interested between the husband and the wife. The like though not equall affection is commanded by the Apostle to the *Col.* 3. by the Fathers towards their children. *You fathers be tender and loving unto your children, and discourage them not.*

Matth. ca. 19.
Mark. cap. 10.
1 Cor. ca. 7.
Ephes. ca. 5.

But let us see what account our common Law hath made of the like customes, founded upon the love and affection between man and wife. It was used of ancient time in Gavelkinde Land, and hath received the allowance and judgement of a good and lawfull custome, that if the husband be attainted and executed for a Felony by him

8 H. M 3 Pres. 60.

him committed, yet shall his wife for the solace of her losse and desolation have her dowry of his Land, and also the heire shall inherite the same according to that old saying: *The Father to the Bough, & the Son to the Plough*; although the common law by rigorous imputation to make man more fearfull to offend in crimes of such quality, extendeth the punishment though not to the persons of the wife and children, yet to their fortune so farre as it may turn to their utter impoverishment and discomfort.

8 E. 2. It in can. Prefer. 50.

P. 35 H. 6. 58.

In the City of *York* there is a custome, that the husband may enfeoffe his wife of such Land as he shall purchase, which though it bee against the rule of the common Law (which disableth the husband to convey any Land to his wife) by feoffement or deed, yet by force of the custome it was adjudged to be lawfull and effectuall. Also the custome of many places in *England* is, that the wife shall enjoy the whole Land of her husband in name of her dowry, as it appeareth by *M. Litt.* himselfe, and the husband cannot by any cautele or devise defeat her thereof. And in some other Countries they have the moity or tone part, and generally by the common Law the third part. In *Northwales* the custome is so beneficiall for wives, (that although they be sure of their thirds of such Land as their husbands shall chance to be seised of at any time during the mariage) yet are they to have the moity or tone part, not onely of his goods and moveables, but also of his Leases, be the terms thereof never so long. Not many yeers ago the custome of Tanndean was alleaged and allowed by the Court of the Kings Bench, that the husband or wife whether so ever of them did happen to over-live should have the inheritance of Fee-simple Land of the other by survivor, a custome ve-

12 H. 3. Pref. 6. 1.

Litt. ti. Dower.

14 Eliz.

rily neither contrary to reason nor repugnant to Religion, as no well disposed or good husband can deny, when he entreth into consideration of those holy duties and good observances that are commended and commanded in holy Scripture. If then these customes bear sway in sundry places, and are publickly approved by judiciall sentences, what Citizen will be so senseleſſe, what *Londoner* so loose, what Merchant or other free man so inconsiderate, and unregardfull of his own good estate, and so ready to defile his own nest, as once to attempt or practise the violation or breach of so good a custome? What is he who seeing the Estate of *London* is preferred before other Cities of the Land, by the benefit and means of their most profitable customes, that will give a dangerous example to abrogate the same, and to call their usages in question? A custome, if it have been once notoriously discontinued, or interrupted, loseth the title and appellation of a custome, and by instance given of the time when it was disused lacketh a great part of his authority. Then unnaturall or at least wise unadvised is that Citizen which to serve his private humour bringeth a generall custome either into question by his fraud, or by his example into contempt. Pernicious also is the president of one custome called in question to the ruine of the rest: Namely, when as the City by their Counsell in her Majesties Courts of *Westminster*, claiming the benefit of their customes, may be encountred and confronted, with a counterplea given by themselves, that such of their own Aldermen and commons have by their deeds and devises either disaffirmed or disanulled the same. A practise as of great condemnation in them that do it, so no doubt of great oversight and incircumspection in them that suffer it.

Read the Epistle to the *Ephes.* ca. 5.

See before in the case of Robbery, how carefull the City was to avoid this danger and to preserve their customs, and also in the case of the attaint before 7 *H.* 6, &c.

But

But somewhat to satisfie the idle cavils pretended to the contrary, saith some one, is not the generall Law of *England* sufficient to manage the government of *London* as well as of all other Subjects, but that *Londoners* must have private customes and usages of their own? This objection made by the enviers or enemies of the wealth of *London* (howsoever they make shew to the contrary,) rather deserveth a hisse then a reply, and is sufficiently confuted in the former discourse.

But it is further urged by some hard husbands, My wife is froward and undutifull, and hath not deserved it. Shee is a fool and cannot rule it. She will marry again, and enrich some other with the fruit of my travaile. Wherefore I think it necessary to abridge her of that liberality which the custome doth extend. Also my children be evill enclined, disobedient or untractable, or some of them be. Wherefore I may with reason deprive them of the benefit of this custome. First to answer the undutifulness; I wish thee whosoever thou art to summon and convent thy selfe to the tribunall seat of thy inward minde, as Saint *Augustine* saith, and to make conscience thy Judge, thy cogitations the Witnesses, thy actions the accusers, thy memory the register or record to give in evidence: and let it be discussed in all due circumstances, whether thou didst not likewise forget the offices of a good husband and defraud her of her duties, (as Saint *Paul* saith) or provoke her to impatience which the same Apostle forbiddeth in these words, *You husbands be loving to your wives, and no way be bitter unto them.* Which also S. *Peter* remembreth in advising husbands to dwell with their wives sincerely and according to knowledge in doing honour unto them as to the weaker Vessell.

Aug. in lib. confess.

1 *Corinth.* ca. 7. *Col.* ca. 3.

Peter Epist. 1. ca. 1.

sell. Let it I say be examined in the consistory of thy conscience whether thou either by thy fault wittingly, or negligently by thy default, or by thy unkindnes unduly, hast caused her being the weaker vessell to bee the more intolerable. If thou find thy selfe condemned by thy conscience, let remorse be thy executioner, and amendment with kindnes towards thy wife be thy penance: but if thou finde thy selfe guilty of no want of affection, love or good carriage of thy selfe towards her, so that her undutifulnes proceeded of her selfe: yet I pray thee remember the benefits which God hath given thee by her means, whether they be gifts of fortune in bettering of thy estate, or eschewing of sin, by her lawfull and comfortable company, or the blessing of children, a soveraign good in this world, thy children being the monuments of thy life and being upon earth, and the repayrers of thy decay. And let these favours and graces enjoyed by her company cover and countervaile her other imperfections whatsoever. Follow therein the example of the wise *Socrates*, who being demanded how he could endure the continuall scolding and vexation of his wife *Xantippe*, likewise asked of the other why he suffered the cackling and unpleasant noise of Hens and Turkeyes in his house, Because said the other they lay Egges and breed Chickens for me: and so said *Socrates Xantippe* beareth me Children, which good turn alone covereth and dispenseth with infinite defects. *Callicratides* the Athenian being demanded why hee a man so nobly descended, but having matched with a base *Thessalian* woman, yet by his last Will bequeathed unto her all his substance, leaving his other friends and kinsfolkes unregarded: because (said he) she is my wife, meaning that shee

who

who was by his judgement and choice made worthy to be his wife, ſhould bee unworthy of nothing that was his. Which may alſo ſatisfie that ſecond point of ſuppoſed folly in the wife, & want of diſcretion to marſhal ſo great a proportion of wealth, as the cuſtome will give her. Wherefore wouldeſt thou mary with a fool, if thou thoughteſt her unworthy of the rights of mariage? then ſeeing thy choice hath eſtopped thy Teſtimony of her folly, thy duty towards thy wife ſhall binde thee to favour and conceale her weakeneſs, and to perform that which the cuſtome pronounceth to be convenient. It cannot be evill beſtowed upon her, whoſe right by cuſtome demandeth it, and whoſe eſtate and imperfections have need of it, whereas if the husband may be permitted by this colour to defeat his wife, many inconveniences and diſorders might enſue.

Leges ſe' accommodant ad ea que frequentius non quæ raro accidunt. Bartolus.

Firſt a generall cuſtome, which is as alſo a generall Law, never provided for ſuch rare accidents as ſeldome fall in experience, but for things that ordinarily and commonly happen, ſhould be broken, to the generall ſcandale and offenſive example of all through the inhability of one, which were a thing unreaſonable. Likewiſe then might husbands, (if that were admitted for a juſt allegation) eaſily deviſe and publiſh that or ſome other imperfection to be in their wives, and thereby bereave them of their right. No more then it is a juſt counterplea or barre to a womans dowet to alleage that ſhe is a fool, no more is the imputation of ſuch ſimplicity honeſt and ſufficient to exclude her from her Portion. No it is well ſaid and maintained for a *Maxime* in the Common Law, *Better it is to ſuffer a miſchiefe then an inconvenience.* Leſſe harmfull and hatefull it is for a man to ſwallow twenty

twenty of these light offences, and to digest sundry of these pretensed scruples, then by violating of a custome no lesse common then commendable to leave to posterity an odious memory and obloquie of his name.

The last objection against wives is no lesse ridiculous then Tyrannicall, grounded upon an unjust desire to restrain them from mariage. Mariage is an honourable Ordinance of God, fit and necessary for all persons disposed thereunto, to the avoiding of sinne, and maintenance of a comfortable and sociable Christian life. To restrain or prohibit the same either in maides or widows, (as Saint *Paul* saith) is the doctrine of divells. And to indent or condition with any that he or she shall not mary, is a condition limited against Law, and by the same pronounced unlawfull and unreasonable. Make it thine own case, admit thou didest match with a wealthy wife, whose furniture and riches hath increased thy Estate, if God should call for her, wouldest thou in a kinde memoriall of the benefits attained by her meanes, make thy selfe a votary to live unmaried? Do those which mary great Heires being women, and after their wives deaths enjoy their whole inheritance by the curtesie of *England*, making their wives heires to expect during their lives, take it for any matter of conscience or scruple to mary again? Unlesse it be in some place where the force of the custome and the benefit of the living joyned together work a contrary resolution in some husbands: which custome annexed to *Gavelkinde* Lands in *Kent* and other places is of this quality, that the husband shall after the decease of his wife be Tenant by the curtesie of her land as long as he remaineth unmaried, whether he have issue by her or not: but upon his next mariage shall utterly

Tim. cp. 1. ca. 4.
43 E. 3. 6.
16 E. 3. aid 129.
19 E. 3. aid 144.

forgo

forgo all his intereſt therein. A cuſtome therefore the leſſe unreaſonable becauſe the reſtraint of mariage of the one ſide is countervailed by the beneficiall favour of the other ſide to have the land by the curteſie without iſſue, and alſo for that hee is to deprive the next Heire of his wife, who perchance hath been maried with him but few moneths or dayes, of the profit and commodity of the whole Land during his life. But chiefely becauſe it is a cuſtom grounded and grown in continuance to ſuch religious obſervation and regard, that it ſeemeth an offence of conſcience to infringe it. But in our caſe ſithence there is neither cuſtome nor conſcience to warrant thy will, why ſhouldeſt thou then ſeem to quarrell with the lawfull liberty of thy wife, if ſhe ſurvive thee, ſhe being weak by kinde and education, and thereby leſſe able to direct her occaſions, and govern her eſtate without a companion and coadjutor? no, on Gods name referre her to her own choice and conſcience therein, and make it no pretenſe and colour to abridge her of her right, becauſe ſhee ſeemeth inclinable unto that, which God hath ordained, and all men and women do embrace. As to the fear and ſuſpicion pretended, that another in matching with thy wife ſhould be enriched by thy travaile, what ſhould move thee to make that ſuperſtitious account of thy goods when thou art gone? Were they any longer thine, then while thou hadſt life and licence to employ them? Thou muſt needs know and acknowledge beſides thy daily experience, by the very Etymologie and ſignification of the word, the true nature and quality of the thing. Theſe worldly goods are called temporall, becauſe they ſerve one but for a time; they are termed tranſitory, for that their property is fleeting from one

owner unto an other; they are named moveable or current, because all their grace and credite is in running and removing into divers hands, according to that rude and old (but yet true) Latine rime.

Omnia mundana per vices sunt aliena,
Nunc mea, nunc hujus, post mortem sunt alterius.
This worldly wealth each day doth change
Their owners as we see,
Now mine, now his, and after death
An others goods they be.

Then sithence thy wealth hath waited upon thee all thy life long, wouldest thou require the same to rest at thy devotion after thy death? If that seem impertinent and unprofitable unto thee, then relinquish this care and suffer the goods of this world to have their naturall course and condition, which is to be still in exchange, passage, and posting from hand to hand, serving all men, *ut peregrinationis viaticum*, That is, *A Pilgrims charge or defrayment in his journey*, as Saint *Hierome* termeth it. And addresse thy minde to the desire of such goods as are neither temporal, transitory, current nor moveable, but perpetuall, permanent, constant, and not onely immutable but inestimable.

Hieronymus in Epist.

But finally to satisfie the last objection against thy children, I wish thee to look back unto that I have said, that thou mayest not for a private injury or displeasure, seem as much as lyeth in thee to supplant and abrogate a publick custome, to the no lesse prejudice then offence of a great number that have interest therein. In enriching thy Son, thou dost discharge the duty of a naturall father towards him, which if hee prodigally or wickedly misspend or abuse, he carryeth his own condemnation and

proveth

proveth a wilfull enemy to himſelfe. The good father mentioned in the Goſpell, who at the ſuite of his undutifull and diſobedient Son, (that would needs abandon the ſervice and attendance on his father to run the courſe of an extravagant Libertine with lewd company) gave him a great portion of his wealth, is not any way blamed by our Saviour for that indulgence, but rather recommended to all poſterity as a true Pattern of a kind father. Saint *Paul* commandeth the father to be well affected to his children, and no way to diſcourage them. What may breed greater diſcouragement or diſcontentment in any childe, then to ſee himſelfe by the place of his birth, and the good fortune of the City intitled to the commodity of a good cuſtome, and yet injuriouſly by his own father, (whoſe affection ſhould be alwayes occupied and earneſt in procuring the good of his children) diſappointed of his hope & defrauded of his right. And as well as ſome having juſt cauſe of diſpleaſure againſt their Sonne and childe, may in this unlawfull and diſorderly ſort practiſe their revenge, ſo may ſome other inconſiderate and wilfull father upon a conceipt taken againſt a good Sonne and of ſingular deſert, for that he concurreth not with him in ſome humour or diſpoſition, moſt wrongfully diſtreſſe and undo him by ſuch a preſident. Thus the miſchiefes objected on the one ſide are light and of ſmall moment, whereas the inconveniences apparent on the other ſide be manifold and of dangerous conſequence. *Luke* 15. *Col.* 3.

I will not vouchſafe to anſwer that undiſcreet *Sarcaſmus* or bitter ſcoffe that ſome uſe, *We may play our wealth at dice without offence to the cuſtome, wherefore ſhould wee not then diſpoſe the ſame from our wife and children* by our

deeds of gift? This amounteth to as much as if a maried man would say, I may commit felony or treason, and be attainted and hanged therefore, and then the Law giveth my wife no dower, nor my heire no patrimony, then why should I not in reason use my discretion with the Land without incumbrance by the one, or injury to the other? Match these two cases together with judgement, and thou shalt perceive they have a sensible concurrency in their addres and application to this purpose. It is well said by the Poet.

il juvat exemplum quod litem lite resolvit.

The example of one wilfull or wicked act giveth no just countenance or allowance to another. Let so much said to thy objections take some place to alter thine humour, or at least be a preparative for thine own reason in the fear of God to purge thee of the same.

But to conclude this short discourse with one consideration of great importance, I wish thee to consider, that this City of *London* is and hath been happily preserved in this flourishing prosperity by the wise and politick consent that all and alwayes the particulars have had to increase the generall good estate thereof, thinking it their duty as they got and acquired their substance in this City, so also to spend and defray it in the same: insomuch that whatsoever falleth from the one commeth and groweth unto another, and by alteration of private fortunes (as chances and changes of times doe require from one Citizen to another) the generall estate hath flourished, and never wanted particular men of wealth and ability to sustain the offices and functions of the City. Upon which consideration by most laudable and antient Custome, the Lord Maior and Senate of *London*

don have been and are intitled to the tuition and cuſtody of young *Orphans* and their goods, and likewiſe are made acquainted by ordinary good means of inventaries taken and produced, what ſubſtance and wealth each man dyeth poſſeſſed of, to the intent that although that man which by his good travaile and Trade hath grown to be rich among them, be departed hence, yet his goods may remain as among his wife and children in uſe and property, ſo to the generall ſtrength of this City in account and reckoning. For wee often ſee that one rich mans wealth paſſeth to the increaſe of the good eſtate of another Citizen, either by mariage of the widow, or of the Orphan: ſo that the City though deprived of a member or inhabitant, yet is not deſtitute of ſuch as may diſcharge his employment and place. Whereas if this pernicious practiſe and uncharitable liberty might take root by deeds of gifts and cautelous conveyance to ſtrangers, not onely the wife and children may be diſtreſſed, but alſo the ſtate of the City much weakened, and in danger of a great diſreputation and decay, from that that it hath bin and yet is. For if it be adjudged lawfull in one, of what degree ſoever he be, it is neither impoſſible nor unlikely, that the ſame will be uſed by many, and conſequently may be practiſed by all: which if it befall, what will become of the happy condition of this City, it is not hard to conjecture. I mean not to extend my ſpeech to the prejudice of any true debts that a man oweth without fraud or colluſion, ſeeing the cuſtome very providently careth for the diſcharge thereof, but my purpoſe is to diſſwade men from evill example, from inſolent violation of good cuſtomes, and from odious and unſeemly practiſes of deceit and evill meaning

towards their wives and children: Which perſwaſion I would wiſh all profeſſors of the Law ſeriouſly and carefully to uſe and enforce to their clients, being Citizens of *London*, as in good conſcience and diſcretion they ought to do.

An Apoſtrophe to the Reader, and the motive of this Treatiſe.

Blame not my bold enterpriſe (gentle Reader) nor reprove my ſimple cenſure herein preſented unto thee, which might I know both for the matter & manner of it have been by any other, and perchance by my ſelfe more largely and effectually delivered: if the opportunity of my leaſure might have anſwered the quality of the argument which I had in hand. But fearing leſt I ſhould with too long a diſcourſe in ſo plain a propoſition breed more lothſomneſs then liking, I would not, for want of leaſure I might not, and if I had had time at will I minded not (ſeeing for any urgent occaſion, the error being yet freſh, the practiſe rare and not grown to an enormity, I needed not) but in a word or two to make thee acquainted with the cauſe that moved me to addreſſe theſe few reaſons to thy gentle view, So it happened, that I being in company and conference with ſome perſons (though otherwiſe wiſe & wel-affected, yet in this matter ſtrangely conceited) it chanced that the lawfulneſſe and conveniency of this cuſtome came in queſtion and debate among us, and was by ſome of them (being men for ſufficiency, of great opinion, and for countenance and credite of good apparance and regard in the City) ſo preſſed with objections, that the moſt part of thoſe which were preſent ſeemed to encline to that perſwaſion. Wherefore leſt the authority of the men might the ſooner ſeduce the ſimple multitude unto their error, and for that

that I thought it a charitable policy to prevent the peril in the prime, before it grew to a feſtering ſore, or incurable evill, according to the Poet *Ovids* adviſe,

Principiis obſta: ſero medicina paratur,
Cum mala per longas invaluere moras.
VVithſtand at firſt the ſpringing evill
VVith medicines fit therefore,
Too late it is to take the cure
Of old and feſtred ſore.

I thought good to apply this ſimple Receipt of reaſon to the minds of all ſuch as ſhall chance to be diſtempered be theſe diſſwaſions: hoping that they will yeeld me that friendly requitall of good conſtruction, which my offerred good will may ſeem to deſerve: and although I keep my ſelfe unnamed, and unknown, it may pleaſe them to have this opinion of me, no more favourable then reaſonable, that he which is well devoted to the defence of good cuſtomes, is rather to be juſtified in his good meaning, then condemned or held ſuſpected of any ſiniſter conceipt.

The

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